



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/763,069	01/20/2004	Jack G. Halterman	JGH-1	3695

7590 11/09/2006
Charles W. McHugh
1010 Milby Rd.
Arlington, TX 76013

EXAMINER

PATEL, TAJASH D

ART UNIT PAPER NUMBER

3765

DATE MAILED: 11/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. NT

10/763,069

Applicant(s)

HALTERMAN, JACK G.

Examiner

Tejash D. Patel

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 9/5/06 (Election).
- 2a) This action is **FINAL**.
- 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-21 is/are pending in the application.
 - 4a) Of the above claim(s) 1-6 and 21 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 7-20 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 - Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 - Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 - 1. Certified copies of the priority documents have been received.
 - 2. Certified copies of the priority documents have been received in Application No. _____.
 - 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 11/2/04.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Election/Restrictions

1. Claims 1-6 and 21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Group I, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on September 1, 2006.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 7, 8, 10, 11, 13 and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by Bay et al. (US 6,263,510). Bay et al. (hereinafter Bay) discloses a garment (14) worn by a motorcycle rider (10) including a self folding air impervious flap (50) having a rectilinear shape and a liner edge is kept open in windy or high speed use which is worn at the front of the motorcycle rider having a first rest position as it hangs generally parallel and downward from the front of the body as shown in figure 4. Further, the flap having a restraining member (80) has a

second operative position at which it protrudes generally perpendicular and forwardly from the front of the body is defined as an air deflector which inherently rams air blowing upward along the front of the body, col. 4, lines 4-48. as shown in figures 6 and 7. In addition, an anchor part (66) being positioned over the front of the upper part of the torso is generally perpendicular therefrom or generally parallel therefrom when in the first and second positions, col. 4, lines 3-48 and as shown in figure 7.

With regard to claim 8, the flap is divided into two folded halves with each of the halves being placed on opposite sides with respect to a centerline through the body as shown in figure 7.

With regard to claim 19, it is inherent that the flap (50) is relatively flexible.

The “whereby” statement in claims 7, 10, and 11; “adapted to” in claim 11 and “whereby” in claim 19 has not been given patentable weight since it does not positively limit the metes and bounds of the patent protection as desired.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

Art Unit: 3765

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9 and 14-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bay .

With regard to claims 9 and 19, the restraining member is made of deformable metal strip, col. 4, lines 15-16. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to recognize that a sufficient weight/force of the user would allow the flap to fall into a rest position or depending on the end use thereof.

With regard to claim 14, it would have been obvious that the garment of Bay can be a sleeveless vest since such article of clothing is considered equivalent in the art of garment making.

With regard to claims 15, 16, 17, and 18, the claimed limitation does not offer any unexpected or critical results therefrom. Therefore, it would have been obvious to one skilled in the art that the flap and anchor can be made of any desired material that was available at the time the device was made having desired configuration as required for a particular application or end use thereof.

Allowable Subject Matter

6. Claims 12 and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Art Unit: 3765

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tejash Patel whose telephone number is (571) 272-4993. The fax phone number for this group is (571) 273-8300.

November 3, 2006



**TEJASH PATEL
PRIMARY EXAMINER**